

Memorandum 2010-55

**Trial Court Restructuring: Rights and Responsibilities of the County as
Compared to the Superior Court (Comments on Tentative Recommendation)**

This memorandum discusses comments received on the Commission's Tentative Recommendation on *Trial Court Restructuring: Rights and Responsibilities of the County as Compared to the Superior Court (Part 1)* (hereafter, "Tentative Recommendation").

The October 25 deadline to comment on the Tentative Recommendation has passed. The Commission received comments from the following sources:

	<i>Exhibit p.</i>
• Alan Carlson, Orange County Superior Court (9/30/10)	1
• John A. Clarke, Los Angeles County Superior Court (10/25/10)	3
• Stephen Dunivent, County of Orange (10/21/10)	9
• Daryl Kennedy, Shasta County Superior Court (10/22/10)	10
• Mary Zurita, County of Monterey (10/25/10)	12

The Commission appreciates these comments. Further comments are still welcome, on any aspect of the Tentative Recommendation.

The attached comments address several issues. For some issues on which the Commission specially sought input, we have so far received no comments. However, we are anticipating further comments, which we will discuss in a supplemental memorandum, alongside remaining issues on which the Commission specially sought input.

To be in a good position to introduce legislation in 2011, it would be best if the Commission approved a final recommendation at the upcoming December meeting. The current plan is to proceed with a bill implementing Part 1 of this study in 2011, and then address additional matters later. Any matter in the Tentative Recommendation that is not ripe for approval at the December meeting could be removed from Part 1 and retained for further consideration.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

The discussion below begins with a comment addressing the Tentative Recommendation generally, and then turns to comments on specific aspects of the Tentative Recommendation.

GENERAL COMMENT

The Commission received one general comment on the Tentative Recommendation.

Stephen Dunivent, Deputy County Executive Officer of the County of Orange (hereafter, "Orange County"), writes on its behalf that "[a]fter careful review, the County has no changes or revisions to present to the Commission." Exhibit p. 9.

SPECIFIC COMMENTS

The Commission received several comments on specific aspects of the Tentative Recommendation. These comments are discussed below.

Gov't Code § 25257. Collection of Money Payable to the County

Government Code Section 25257 allows the county to discharge its officers and employees from the obligation to collect an amount that is too small to justify the cost of collection.

The Commission proposed revising Section 25257 to remove obsolete material relating to a judicial district, as follows:

25257. Any department, officer, or employee of a county ~~or a judicial district in the county~~, charged by law with the collection of any county or district tax assessment, penalty, cost, or license fees, ~~or any judicial district fine, assessment, or penalty, or any money,~~ which is due and payable to the county or district for any reason, may apply to the board of supervisors for a discharge from accountability for the collection thereof if the amount is too small to justify the cost of collection, the likelihood of collection does not warrant the expense involved, or the amount thereof has been otherwise lawfully compromised or adjusted.

The Commission specially sought input on whether the court, like the county, may discharge its officers and employees from the obligation to collect a debt that is too small to justify the cost of collection, and if not, whether such authority is needed.

In response, the staff of the Orange County Superior Court (hereafter, "O.C. Superior Court staff") comments that the court needs this authority. See Exhibit

p. 1. The comments add that such authority would be provided by legislation that has been drafted, but not yet incorporated into a bill. *Id.* The comments do not specify who drafted the legislation, but refers to it as “Collections legislation.” *Id.* The comments describe a perceived shortcoming of that draft legislation, in that it would require

an agreement between the Court and the County first. In my opinion the Court should be allowed to discharge these amounts under Court Executive/Judicial approval and/or AOC [Administrative Office of the Court] approval and should not have to reach an agreement with the County first.

Exhibit p. 2.

It appears this draft legislation was recently incorporated into a bill, and enacted as an urgency measure. See 2010 Cal. Stat. ch. 720, § 6 (SB 857) (Committee on Budget and Fiscal Review). The bill adds Government Code Section 25259.7, which authorizes a court to discharge an obligation to collect a debt too small to justify the cost of collection:

25259.7. Any collection program that is operated by a court may apply to the presiding judge of the court for a discharge from accountability for any court-ordered debt or bail that it would otherwise be responsible for collecting, if the amount is too small to justify the cost of collection or the likelihood of collection does not warrant the expense involved. Responsibility for collection of court-ordered debt or bail shall be demonstrated by a written agreement between the county and the court. If the county is responsible for collecting court-ordered debt or bail, the county may transfer responsibility for discharging court-ordered debt or bail to the court by written agreement.

The same piece of legislation also removed from Government Code Section 25257 the material made obsolete by trial court restructuring, as follows:

25257. ~~(a) Any department, officer, or employee of a county or a judicial district in the county, charged by law with the collection of any county or district tax assessment, penalty, cost, license fees, or any judicial district fine, assessment, or penalty, or any money, which is due and payable to the county or district for any reason, may apply to the board of supervisors for a discharge from accountability for the collection thereof if the amount is too small to justify the cost of collection, the likelihood of collection does not warrant the expense involved, or the amount thereof has been otherwise lawfully compromised or adjusted.~~

(b) Any collection program that is operated by a county may apply to the board of supervisors for a discharge from

accountability for the court-ordered debt or bail that it would otherwise be responsible for collecting, if the amount is too small to justify the cost of collection or the likelihood of collection does not warrant the expense involved. Responsibility for collection of court-ordered debt or bail shall be demonstrated by a written agreement between the county and the court. If the court is responsible for collecting court-ordered debt or bail, the court may transfer responsibility for discharging court-ordered debt or bail to the county by written agreement.

Compare Gov't Code § 25257, 2010 Cal. Stat. ch. 720, § 6 (SB 857) (Committee on Budget and Fiscal Review) with former Gov't Code § 25257, 1982 Cal. Stat. ch. 659 § 1. Apart from adding subdivision (b), the revisions mirror those proposed in the Tentative Recommendation.

Thus, recent legislation (1) removed from Section 25257 the material made obsolete by trial court restructuring, and (2) enacted authority for the court to discharge an obligation to collect a debt too small to justify the cost of collection.

Now that the Legislature has addressed these issues, there is no need for the Commission to study them further. Doing so would be beyond our authority in this study, since Section 25257 has been amended to reflect trial court restructuring. Even if the Commission had the authority to examine issues raised by the O.C. Superior Court staff, the Commission should refrain from doing so. The Commission has a pragmatic practice not to disrupt recent policy determinations by the Legislature.

Based on all of the above, the staff recommends removing the proposed revisions to Section 25257 from the Commission's proposal.

Bus. & Prof. Code § 25762. Distribution of Money Collected for Violating the Alcoholic Beverage Control Act

Business and Professions Code Section 25762 governs the distribution of a fine, bail forfeiture, or bail deposit, relating to a violation of the Alcoholic Beverage Control Act (hereafter, "ABC Act"). The section still directs those monies based on which trial court (municipal or superior) collected the money, even though the municipal court no longer exists.

The Commission's amendment of Section 25762 would direct the money to the same destination as before trial court restructuring, but without referring to the municipal court. Specifically, the provision would direct the money based on the type of case in which the money is collected — i.e., in a type of case formerly heard by the municipal court (a misdemeanor, an infraction, or early stage of a

felony case), or in a type of case formerly heard by the superior court (a later stage of a felony case). Thus, the proposed amendment reads:

25762. (a) All fines and forfeitures of bail imposed for a violation of this division and collected in any ~~court other than a municipal court~~ felony case after the indictment or the legal commitment by a magistrate, or at or after the sentencing hearing, shall be paid to the county treasurer of the county in which the court is held.

(b) All fines and forfeitures of bail imposed for violation of this division and collected upon conviction or upon forfeiture of bail, together with money deposited as bail, in any ~~municipal court misdemeanor or infraction case, or in any felony case at the preliminary hearing or at another proceeding before the legal commitment by a magistrate,~~ shall be deposited with the county treasurer of the county in which the court is situated and the money deposited shall be distributed and disposed of pursuant to Section 1463 of the Penal Code.

(c) For purposes of this section, a case in which both a felony and a misdemeanor were charged shall be treated as a felony case.

These proposed revisions rest on a premise that violation of the ABC Act is a criminal matter. As a precaution, the Commission specially sought input on whether a violation of the ABC Act could be a civil matter. The Commission also specially sought input on how the provision interrelates with other sections governing bail deposits (such as Penal Code Section 1463.1 and Government Code Sections 53647.5, 53679, and 77009).

We received no specific comments on these issues. The lack of specific comment on the issues, coupled with the general comment from Orange County (stating it has no suggestions regarding the Tentative Recommendation), suggests that no changes are needed relating to these issues. **Based on the information currently available, the staff does not recommend any changes relating to these issues.**

Interrelationship Between Bus. & Prof. Code § 25762 and Gov't Code § 71384

The Commission received a comment from the O.C. Superior Court staff on the relationship between the proposed amendment of Business and Professions Code Section 25762 and another amendment proposed in the Tentative Recommendation: the amendment of Government Code Section 71384. Exhibit p. 1.

Government Code Section 71384 pertains to a deposit of money collected by a superior court pursuant to an accounting system established by the Controller. The Commission tentatively proposed revisions to the section to reflect the

Lockyer-Isenberg Trial Court Funding Act (hereafter, “Trial Court Funding Act” or “Act”), which made both the Judicial Council and the Controller responsible for overseeing fiscal matters of the superior court. See Gov’t Code § 77206. The proposed amendment of Section 71384 states:

71384. The system established pursuant to this article may provide for the deposit of all money collected by superior courts in ~~the county treasury~~ accounts as provided by law, for disbursement from ~~it those accounts~~, and for the audit of ~~such the~~ the accounts by the ~~county auditor~~ Controller and the Judicial Council as provided in Section 77206.

The O.C. Superior Court staff posits that there is a conflict between this proposed amendment and the proposed amendment of Business and Professions Code Section 25762. The observation is premised on a stated understanding that the amendment of Government Code Section 71384 would allow courts “to deposit all monies collected in the place of their choice.” Exhibit p. 1. Based on this interpretation of proposed Section 71384, the comments suggest further revisions pertaining to the deposit of money into court bank accounts. See *id.*

However, we do not believe that the above interpretation should follow from the text of the proposed Section 71384, which grants no discretion on where to deposit money, but requires deposit into “accounts *as provided by law*.” (Emphasis added.)

For this reason, the staff is not persuaded that there is any conflict between the proposed amendment of Business and Professions Code Section 25762 and the proposed amendment of Government Code Section 71384.

We therefore recommend that the proposed amendment of Business and Professions Code Section 25762 be left as is.

Gov’t Code § 71384. Deposit of Money Collected by the Superior Court

In addition to the point just discussed, there are other issues relating to the proposed amendment to Government Code Section 71384. In particular, the L.A. Superior Court objects to the proposed amendment on the ground that “the authority to allow deposit of all money into the county treasury should be retained.” Exhibit p. 6. The court writes that the revisions would delete authorization to deposit

money collected by the superior court in the county treasury Such authorization is of course consistent with provisions that *require* deposit directly in the county treasury. But it also facilitates

compliance with provisions that require specified collections made by the court to be deposited ultimately into accounts other than the county treasury, including accounts established by the Administrative Office of the Courts.

Id. (emphasis in original).

As the court points out, deposit into the county treasury is required by some provisions. See, e.g., Bus. & Prof. Code § 25762(a). The court also explains that even when deposit into the county treasury is not required, deposit into a court trust account in the county treasury facilitates eventual deposit into a court bank account, which is the procedure used in Los Angeles County.

However, we do not believe the proposed revisions to Section 71384 would disrupt deposits into the county treasury. The proposed language would direct deposits into “accounts as provided by law.” The term “accounts” seems broad enough to encompass the county treasury. The L.A. Superior Court’s comments even refer to the county treasury as a type of account. See Exhibit p. 6 (referring to “... *accounts other than the county treasury*, including accounts established by the Administrative Office of the Courts.”) (emphasis added).

Nevertheless, the proposed deletion of the reference to the county treasury may be confusing. To make clear that deposit into “accounts as provided by law” includes the county treasury, it may be helpful to retain the reference to the county treasury, as follows:

71384. The system established pursuant to this article may provide for the deposit of all money collected by superior courts in the county treasury or other accounts, as provided by law, for disbursement from ~~it~~ those accounts, and for the audit of ~~such the~~ the accounts by the ~~county auditor~~ Controller and the Judicial Council as provided in Section 77206.

But before determining whether to include such revisions to Section 71384 in a final recommendation, the Commission needs to consider the court’s broad objections to the proposed revisions of the article containing that revision (Sections 71380-71386). That input is discussed below.

Gov’t Code §§ 71380-71386. Uniform Accounting System for Courts

Government Code Sections 71380-71386 comprise a short article pertaining to an accounting system for courts. Section 71380 states that the Controller must establish and supervise a uniform accounting system for all fines, penalties, forfeitures, and fees assessed by courts.

However, the Trial Court Funding Act places fiscal oversight of the courts with the Judicial Council, in consultation with the Controller:

The Judicial Council, in consultation with the Controller, shall maintain appropriate regulations for recordkeeping and accounting by the courts. The Judicial Council shall seek to ensure, by these provisions, that (1) the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly, and (2) all moneys collected by the courts, including filing fees, fines, forfeitures, and penalties, and all revenues and expenditures relating to court operations are known. ...

Gov't Code § 77206(a) (emphasis added); see also Gov't Code § 77206(c) (authorizing Controller and Judicial Council to audit courts).

Accordingly, the Commission proposed revisions to the article — specifically, Sections 71380, 71381, 71382, and 71384 — to reflect the fiscal oversight shared by the Judicial Council and the Controller.

The L.A. Superior Court objects to the revisions. Exhibit p. 8. The court writes that

[m]aking the Judicial Council solely responsible for establishing and supervising a uniform trial court accounting system is inconsistent with Legislative mandates, and provisions authorizing counties to act as a superior court's paymaster for trial court employees.

... In addition, such exclusive control in the Judicial Council is inconsistent with Government Code §§ 71627, and 71624(d). To facilitate counties' ability to recruit and retain highly qualified court staff to serve their residents, the Legislature has authorized trial court staff to be paid through county rather than state payroll systems so that they can fully participate in enhanced benefits that counties may make available. Government Code §§ 71627(c), and 71624(d).

Id.

The staff does not perceive an inconsistency between the proposed revisions to the accounting system and the provisions authorizing a county to handle payroll and provide benefits for trial court employees. An accounting system that governs the court should not preclude the county from handling payroll or providing benefits for court employees.

However, the L.A. Superior Court further objects that “[t]he recommendation does not provide for any consultation or involvement of trial courts in the establishment of [an accounting] system.” *Id.* As the court points out, trial courts are responsible for “manag[ing] day-to-day operations, countywide

administration of the trial courts, local personnel plans, processes and procedures.” *Id.*

The court also asserts that not consulting or involving the local courts is “inconsistent with the Legislature’s direction to the Judicial Council to adopt a Trial Courts bill of Financial Management Rights, something the Judicial Council has not done.” *Id.* The court quotes an uncodified section of the Trial Court Funding Act, which states the Legislature’s intention to:

SEC. 3. ...

(l) Acknowledge the need for strong and independent local court financial management, including encouraging the adoption by the Judicial Council of a Trial Courts Bill of Financial Management Rights, to be approved no later than January 1, 1998. This bill of management rights shall minimize the rules and regulations in the area of financial affairs to those sufficient to guarantee efficiency, but shall give strong preference to the need for local flexibility in the management of court financial affairs.

Exhibit p. 4, n. 1.

Nevertheless, the Trial Court Funding Act specifically places responsibility with the Judicial Council, in consultation with the Controller, to maintain accounting regulations for courts. Gov’t Code § 77206(a). The Act expressly states that the Judicial Council shall seek to ensure that “all moneys collected by the courts ... and all revenues and expenditures relating to court operations are known.” *Id.* On this matter, the Act does not appear to require consultation with the trial courts.

However, as the court’s comments demonstrate, matters pertaining to fiscal oversight of the courts are controversial and politically unsettled. These issues appear to be beyond the Commission’s purview to resolve. Moreover, the issues have received recent attention from the Legislature. See, e.g., AB 2527 (Torrico) (not enacted in 2009-2010 session), SB 857 (Committee on Budget and Fiscal Review) (enacted as 2010 Cal. Stat. ch. 720).

Due to the unsettled policy issues pertaining to fiscal oversight of the courts, it appears that the Commission should refrain from including any specific revisions to Sections 71380, 71381, 71382, or 71384 in a final recommendation at this time. **The staff recommends withdrawing those provisions from the current proposal.** If the Commission agrees, this would obviate the need to resolve at this time the issues relating to Section 71384, discussed earlier on pages 6-7.

At a later date, the Commission should revisit this matter. If significant policy issues remain unsettled, it may still be unwise to attempt any clean-up of Sections 71380, 71381, 71382, and 71384 to reflect trial court restructuring.

Instead, the Commission may want to explain in a report to the Legislature and the Governor that the provisions appear to need revision to reflect trial court restructuring, but involve controversial policy questions that the Commission is not authorized to resolve. Other code provisions may warrant similar treatment (e.g., provisions on court reporter compensation or judicial benefits). In such a report, the Commission could perhaps propose a mechanism for accomplishing the necessary clean-up, such as creation of a stakeholder task force to consider the unresolved issues, attempt to reach a resolution, and report back to the Legislature and Governor by a specified date. The Commission could even draft legislation to establish such a task force, or the like.

In this manner, the Commission may be able to bring some closure to its work on trial court restructuring, despite the existence of continuing controversy between stakeholders over certain matters. **The staff encourages Commission members and other interested persons to give this idea some thought, and to consider the best means of implementing it or an alternative approach.** The staff has been toying with the concept for awhile, and is eager for suggestions on how to develop it.

Gov't Code § 29370. County Officers' Cash Difference Fund

Government Code Section 29370 authorizes the board of supervisors to establish a cash difference fund for use by a county officer or an administrative head of any county department handling county funds.

As we understand it, a cash difference fund is a fund “for the purpose of replenishing cash shortages.” See County of Yolo, Cash Accounting Manual (2002), § 4.1. A cash shortage

is the amount that should be added to the actual cash collected to equal the amount that should have been collected. Cash shortages arise from simple errors by clerks or customers during the cash collection process and are usually not traceable to specific transactions.

Id.

The Commission proposed revising Section 29370 to remove obsolete references to a judicial district, as follows:

29370. The board of supervisors may establish a county officers cash difference fund for the use of any county officer or administrative head of any county department ~~or judicial district~~ handling county funds by adopting a resolution setting forth the amount of the fund. Certified copies of the resolution shall be transmitted to the county auditor and to each county officer or administrative head of a county department ~~or judicial district~~ who has such fund.

The Commission specially sought input on whether the court has authority to establish a cash difference fund, and if not, whether it should. If the answer is that the court should have such authority, the Commission further asked whether the fund should be governed by rules comparable to those governing a county's cash difference fund.

In response, the O.C. Superior Court staff writes that courts need the authority, and that the "process should be handled internally within the Court." Exhibit p. 2. The court's staff apparently believes that governance of the fund should be handled by the court, not by statute.

We are unsure whether governance of the fund should be left up to the court. Governance of a county's cash difference fund is not left up to the county. Instead, the Legislature provided governing rules by statute. See, e.g., Gov't Code §§ 29370-29390.1. Those statutory rules formerly applied to courts that had access to a county's cash difference fund. This seems to weigh in favor of establishing statutory rules governing a court's cash difference fund, akin to those governing a county's cash difference fund.

The rules governing a county's cash difference fund are set forth in Government Code Sections 29370.1-29390.1 (about twenty sections). Because these provisions apply specifically to the county (containing references to the board of supervisors, its resolution establishing the fund, and so forth), and are located in a portion of the codes governing counties (rather than courts), separate governing rules for a court's cash difference fund would be appropriate, if indeed such rules should be statutory in nature.

The manner in which a court's cash difference fund should be established and governed, however, appear to raise policy questions beyond updating statutes to reflect trial court restructuring. These questions should be considered by the Legislature itself; they do not seem to be within the Commission's authority to determine whether any provisions of law are obsolete as a result of trial court restructuring. See Gov't Code § 71674. An attachment to this memorandum sets forth a preliminary staff draft of what the first few statutory rules governing a

court's cash difference fund might look like. The draft shows the draft provisions alongside the first few statutory rules governing a county's cash difference fund (with revisions to reflect trial court restructuring, as shown in the Tentative Recommendation, as well as some technical revisions explained later in this memorandum).

The removal of obsolete references to the judicial district, however, is clearly within the Commission's purview. The staff does not believe that removing those references would prejudice a separate effort to establish a court's cash difference fund.

The staff therefore recommends (1) moving forward with the proposed revisions to Section 29370 and related sections, but (2) alerting the Legislature to the policy questions it may wish to resolve relating to a court's cash difference fund. To accomplish the latter point, the Commission could revise footnote 36 in the preliminary part of the Tentative Recommendation. Specifically, the footnote should explain that it may be advisable to enact a statute authorizing a court to establish a cash difference fund. The footnote should further explain that the Commission has not proposed such a statute because it is debatable whether governance of such a fund should be determined by statute (similar to Gov't Code §§ 29370.1-29390.1), or handled by the court without statutory guidance. The footnote should indicate that this policy decision appears to be beyond the Commission's authority and better-suited to resolution in the Legislature.

Fam. Code § 3153. Compensation of Counsel Appointed for a Minor

Family Code Section 3153 governs compensation of counsel appointed by a court to represent a child pursuant to specified sections. If a court determines that the parties are financially unable to pay all or part of the counsel's compensation, the section allocates payment of the left-over amount to the county. Fam. Code § 3153(b).

The Trial Court Funding Act, however, expressly provides that the state, not the county, is responsible for that payment, which is defined as a "court operation." See Gov't Code §§ 77003(a)(4) ("court operations" include "counsel appointed by the court to represent a minor pursuant to Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code"), 77200 (state funding of "court operations"); see also Cal. R. Ct. 10.810(d), Function 7 ("court operations" include "[e]xpenses for court-appointed counsel as specified in Government Code § 77003").

As a result, the Commission proposed revising Section 3153(b) to provide that the state, rather than the county, is responsible for that payment, as follows:

3153. ...

(b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed pursuant to this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county court. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county court payment of counsel appointed by the court pursuant to this chapter.

The L.A. Superior Court objects to these revisions. The court explains that existing Section 3153 is

consistent with the historic and current treatment of such costs by the court and county in some counties, including Los Angeles County, as county charges. Such counties have paid and continue to pay these costs as a county expense.

Exhibit p. 6.

The court further explains that the cost of court-appointed counsel under Section 3153(b) is not included in state funds for court operations allocated to the L.A. Superior Court. See Exhibit p. 7. The state funds allocated to the court are based on the county's past reported expenditures on court operations. *Id.* The reported expenditures from Los Angeles County did not include the cost of court-appointed counsel under Section 3153(b). *Id.* Although the Trial Court Funding Act provided a review process to correct reported expenditures, neither the L.A. Superior Court nor the County of Los Angeles made any corrections on this matter. *Id.* Accordingly, the cost of court-appointed counsel under Section 3153(b) is treated in Los Angeles as a county, not a court, expense. *Id.*

The court thus writes that the proposed revision to Section 3153

would jeopardize current funding levels for court appointed counsel for minors ... by resulting in neither a county obligation to pay the costs of appointed counsel directly nor an obligation to otherwise provide funds for court-appointed counsel as part of the County's MOE [maintenance-of-effort] obligation [i.e., the county's remittance to the state under the Trial Court Funding Act]. Because Los Angeles County and certain other counties did not include such costs in the determination of their ... base year calculation of their ongoing MOE [remittance] responsibility, little more than \$ 2 million [have] been appropriated statewide for these

costs. In Los Angeles County, such costs exceed \$6 million annually.

Exhibit pp. 6-7.

The court further writes:

Although there is a conflict in the provisions of Family Code § 3153 and Government Code § 77003, whether and how it should be addressed raises significant issues regarding how court-appointed counsel costs will be funded in courts where the court and county have mutually treated such costs consistent with section 3153 before, during and after the MOE [remittance] review process.

Exhibit p. 8.

In light of the information provided by the L.A. Superior Court, perhaps an alternative revision could reflect both the Trial Court Funding Act and the situation that some counties still pay the cost of counsel under Section 3153(b). For example, the provision could provide for payment by either the court or the county, as follows:

3153. ...

(b) Upon its own motion or that of a party, the court shall determine whether both parties together are financially unable to pay all or a portion of the cost of counsel appointed pursuant to this chapter, and the portion of the cost of that counsel which the court finds the parties are unable to pay shall be paid by the county or court. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county or court payment of counsel appointed by the court pursuant to this chapter.

However, that approach could raise new problems. It could erroneously imply that the county is to pay for the cost of the counsel, even when the cost was properly reported as a past expenditure on court operations, and is thus included in funds received from the state to pay for court operations. In this situation where the cost of the counsel was reported and funds from the state reflect that allocation, the cost would be properly paid by the court, not the county. But the above revision could be interpreted to mean that the county is also responsible to pay that cost, which would be improper.

Based on all of the above, it appears that revising Section 3153 to reflect the Trial Court Funding Act is likely to be a controversial matter. It is debatable how to treat a county in which the cost of court-appointed counsel under Section 3153 was classified as a county expense in calculating the county's baseline

remittances. **Accordingly, the staff recommends removing the amendment of Family Code Section 3153 from the Commission's proposal.** We further suggest that the Commission revisit this matter at a later date, and perhaps include it in a report to the Legislature and the Governor, along the lines discussed earlier in connection with Government Code Sections 71380, 71381, 71392, and 71384 (Uniform Accounting System for Courts).

Penal Code § 1463.22. Money Collected for Violating Vehicle Code Section 16028

Penal Code Section 1463.22 concerns the allocation of fines and forfeitures relating to a conviction or bail forfeiture for a violation of Vehicle Code Section 16028, following deposit of these fines and forfeitures with the county treasurer. Section 16028 is violated by a failure to provide proof of financial responsibility for a vehicle, upon demand by a peace officer or traffic collision officer, as specified.

To remove material made obsolete by trial court restructuring, and to correct obsolete cross-references to the Vehicle Code, the Commission proposed revising Section 1463.22 as follows:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents (\$17.50) for each conviction of a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and allocated to defray costs of ~~municipal and~~ superior courts incurred in administering Sections 16028, and 16030, ~~and 16031~~ of the Vehicle Code. Any moneys in the special account in excess of the amount required to defray those costs shall be redeposited and distributed by the county treasurer pursuant to Section 1463.

(b) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, three dollars (\$3) for each conviction for a violation of Section 16028 of the Vehicle Code shall be initially deposited by the county treasurer in a special account, and shall be transmitted once per month to the Controller for deposit in the Motor Vehicle Account in the State Transportation Fund. These moneys shall be available, when appropriated, to defray the administrative costs incurred by the Department of Motor Vehicles pursuant to ~~Sections 16031, 16032, 16034, and 16035~~ Section 16030 of the Vehicle Code, and the administrative costs incurred by the Department of Motor Vehicles pursuant to Section 13365 of the Vehicle Code when the underlying charge is an infraction under Article 2 (commencing with Section 16020) of Chapter 1 of Division 7 of the Vehicle Code, or a misdemeanor under the same article. It is the intent of this

subdivision to provide sufficient revenues to pay for all of the department's costs in administering those ~~sections~~ provisions of the Vehicle Code.

(c) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, ten dollars (\$10) upon the conviction of, or upon the forfeiture of bail from, any person arrested or notified for a violation of Section 16028 of the Vehicle Code shall be deposited by the county treasurer in a special account and shall be transmitted monthly to the Controller for deposit in the General Fund.

Comment. Section 1463.22 is amended to reflect unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution.

The section is further amended to reflect the repeal of cross-referenced provisions in the Vehicle Code, and the enactment of similar provisions in that code. See 1996 Cal. Stat. ch. 1126, §§ 6, 8 (enacting Vehicle Code Sections 16028 and 16030); 1984 Cal. Stat. ch. 1322, §§ 9, 12, 13, 15, 16 (enacting former Vehicle Code Sections 16028, 16031, 16032, 16034 and 16035, which were later repealed by their own terms).

Section 1463.22(a) allocates a specified amount of fines collected for a violation of Vehicle Code Section 16028 to defray court costs of administering specified Vehicle Code sections. The county treasurer is to deposit the amount into a special account. If that amount exceeds what is needed to defray court costs, the treasurer must redeposit the excess money into the county treasury, for distribution pursuant to a scheme set forth in other sections. See Penal Code §§ 1463 (directing "[a]ll fines and forfeitures imposed and collected for crimes" to "be distributed in accordance with Section 1463.001"), 1463.001 (directing money to be distributed to variety of governmental entities).

The Commission specially solicited comment on whether Section 1463.22 "should continue to provide that funds to defray court costs are under the county treasurer's control, given the shift of funding court operations from the county to the state," and if not, "which entity should control the funds to defray court costs, and where should the funds be deposited?"

The Commission received input on this issue from the County of Monterey (hereafter, "Monterey County"), the Shasta County Superior Court, and the O.C. Superior Court staff.

The courts and the county express different views on the issue. The input from the courts is described below, followed by that of the county.

Input from Courts

The Shasta County Superior Court writes that the money to defray the court's costs should be placed directly under the court's control:

Our court believes that the statute should be updated to require that the monies go directly to the entity for whose benefit they are intended. That was how the statute operated before Trial Court Funding, when counties bore the costs of trial court operations. Since the monies are intended for the superior court, our court respectfully suggests that [Penal Code Section 1463.22(a)] be revised to direct that the county treasurer deposit them into the local operating account of each superior court.

Exhibit p. 10.

Similarly, the O.C. Superior Court staff writes that money for the court should be under the court's control, rather than the county's. Exhibit p. 2. It further writes that, if there are any excess funds, they should either be (1) distributed after a certain period of time to the Court Operating Fund, or (2) redistributed to agencies that pay into the fund, based on how much each agency pays into it. *Id.*

The proposed revisions to Section 1463.22 in the Tentative Recommendation would not alter the existing treatment of excess funds. The O.C. Superior Court staff nevertheless suggests treating the excess funds in a different manner. Because that different treatment is not necessitated to reflect trial court restructuring, revisions to do so would be beyond our authority in this study. **We therefore recommend against changing the distribution of excess funds.**

Returning to which entity should control the funds allocated to defray court costs, both the Shasta County Superior Court and the O.C. Superior Court staff believe the funds should be controlled by the court, rather than the county treasurer. As discussed below, Monterey County has a different view.

Input from Monterey County

Monterey County writes that the funds to defray court costs should remain under the county treasurer's control. Exhibit p. 12. The county explains that

[c]ounties currently maintain comprehensive collection systems and have expertise in the collection and distribution functions. Changing the funds to State control could result in a [delay] of the distribution process resulting in a cash flow problem. Additionally, creating a state collection process function similar to that operated by the County would incur new costs and be

duplicative of an existing system (the County's) that could be viewed as a 3rd party vendor.

Id.

To summarize, the county expresses two main concerns. First, the county is concerned that placing funds to defray court costs under state control could result in a delay in distributing money in excess of the amount needed to defray court costs. According to the county, this delay might cause cash-flow problems for entities entitled to the excess funds.

Second, the county is concerned that placing the funds under state control would necessitate a duplicative state collection system. However, that would not necessarily be the case. For example, Section 1463.22(a) could perhaps be revised as follows:

1463.22. (a) Notwithstanding Section 1463, of the moneys deposited with the county treasurer pursuant to Section 1463, seventeen dollars and fifty cents (\$17.50) for each conviction of a violation of Section 16028 of the Vehicle Code shall be ~~deposited~~ transferred by the county treasurer to the superior court, for deposit in a special account ~~and allocated~~ to defray costs of ~~municipal and superior courts~~ incurred by the court in administering Sections 16028, and 16030, ~~and 16031~~ of the Vehicle Code. Any moneys in the special account in excess of the amount required to defray those costs shall be ~~redeposited~~ transferred back to the county treasury and distributed by the county treasurer pursuant to Section 1463.

...

Under this approach, the county collection and distribution system would not be duplicated within the court, but the court (not the county) would have control over the account that is used to defray the costs incurred by the court in administering Vehicle Code Sections 16028 and 16030.

Nevertheless, the county's concern gives the staff pause. At this point, there appears to be fundamental disagreement on which entity — the court or the county — should control the funds. **Given the lack of consensus among stakeholders, the staff recommends removing the amendment of Penal Code Section 1463.22 from the Commission's proposal.** We further suggest that the Commission revisit the matter at a later date, and perhaps include it in a report to the Legislature and the Governor, along the lines discussed earlier in connection with Government Code Sections 71380, 71381, 71382, and 71384 (Uniform Accounting System for Courts).

Useful input from the DMV guided the Commission in formulating its proposed revisions to Section 1463.22, to update obsolete cross-references to the Vehicle Code and remove an obsolete reference to the municipal courts. For the benefit of this input to be realized, the Commission should present those proposed revisions to the Legislature and Governor in the contemplated future report. This could be done alongside a description of the remaining unresolved issues in Section 1463.22 relating to trial court restructuring.

Comments on the Narrative Discussion (Preliminary Part)

The L.A. Superior Court provides two comments on the narrative discussion in the Tentative Recommendation (pp. 1-14). These comments are described below. In considering them, it should be kept in mind that the narrative discussion of an enacted recommendation lacks the force of law, but that this discussion evidences legislative intent in interpreting the enacted provisions. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 11 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); see also *2008-2009 Annual Report*, 38 Cal. L. Revision Comm'n Reports 1, 16-20 (2008).

Responsibility for Funding Court Operations

The L.A. Superior Court writes:

The Tentative Recommendation assumes and states that the State is now fully responsible for funding trial court operations and that the funding and operation of trial courts is no longer a county concern. This is not accurate and does not reflect the fact that each county has ongoing interests in the trial court in that county and that [counties] are authorized to not only make mandated annual payments in support of trial court operations but also to provide additional support beyond that mandated by the state to best serve the interests of their residents.

Exhibit p. 4.

The staff is unable to locate in the Tentative Recommendation a statement that “the State is now fully responsible for funding trial court operations and that funding and operation of trial courts is no longer a county concern.”

The Tentative Recommendation does say that “the state, instead of the county, became responsible for funding ‘court operations,’ as defined in Government Code Section 77003 and Rule 10.810.” See Tentative Recommendation, p. 3, lines 10-12. Similar statements appear elsewhere in the

Tentative Recommendation. However, we believe the statements accurately reflect Government Code Section 77200.

Section 77200 expressly states that “[o]n and after July 1, 1997, *the state shall assume sole responsibility for the funding of court operations*, as defined in Section 77003 and Rule 10.810 of the California Rules of Court as it read on January 1, 2007. ...” (Emphasis added.)

Nevertheless, the Commission could perhaps point out in a footnote, that the Trial Court Funding Act requires counties to pay remittances to the state. See, e.g., Gov’t Code § 77201.3 (setting forth remittance amount owed by each county, for 2006-07 fiscal year, and each one after). That could easily be incorporated into footnote 1, by revising it along the following lines:

1. See 1997 Cal. Stat. ch. 850; see generally Gov’t Code §§ 77000-77655. An earlier trial court funding act made the state partially responsible for funding trial court operations. 1988 Cal. Stat. ch. 945. That act was known as the Brown-Presley Trial Court Funding Act. Its name is still used in Government Code Section 77000.

Although Government Code Section 77200 now makes the state solely responsible for funding trial court operations, each county is required to pay an annual remittance to the state, based on the county’s past expenditures for trial court operations. See Gov’t Code § 77201.3 (setting forth remittance amount owed by each county, for 2006-07 fiscal year, and each year thereafter).

Is that something the Commission is interested in doing?

Classification of Court

The L.A. Superior Court also objects to text at lines 18-19 of page 5 of the narrative discussion, which says “[a]dditionally, the court should no longer be classified as a county entity.” Exhibit p. 5. (The court does not object to any proposed statutory revisions that are based partly on that premise.)

The court explains that no longer classifying the court as a county entity “is a policy decision that should not be made by the Law Revision Commission.” *Id.* The court notes that it is an “important and inextricable part of the county justice system serving the same constituency as the county,” among other things. *Id.*

The objectionable sentence is part of a broader discussion explaining that the county no longer manages or controls the court, and that the state has assumed responsibility for funding for court operations. See Tentative Recommendation, p. 5, lines 7-14. The discussion further explains that, as a result, “duties to manage the courts should no longer be attributed to the county, and the county should no longer be treated as the employer of court personnel.” See Tentative

Recommendation, p. 5, lines 16-18. The staff believes that the discussion, without the objectionable sentence, would amply explain the proposed revisions that follow from the discussion. **Accordingly, the staff recommends deleting that sentence from lines 18-19 of page 5 of the Tentative Recommendation.**

TECHNICAL CORRECTION SUGGESTED BY THE STAFF

In preparing this memorandum, the staff noticed a technical flaw in the Tentative Recommendation, which should be fixed. Specifically, Government Code Section 29370.1 currently includes some unlabeled paragraphs, in violation of the Legislative Counsel's preferred drafting practice. The amendment of that section proposed in the Tentative Recommendation would not correct that problem.

This oversight should be fixed, by replacing the amendment in the Tentative Recommendation. The new amendment would mirror the amendment in the Tentative Recommendation, but add a label to each paragraph of the section:

Gov't Code § 29370.1 (amended). County auditor

SEC. _____. Section 29370.1 of the Government Code is amended to read:

29370.1. (a) As an alternative to Section 29370, the board of supervisors may, by resolution, authorize the county auditor to perform the functions of the board in establishing, increasing, reducing, or discontinuing any county officers cash difference fund.

(b) The resolution adopted by the board of supervisors may set the amount of the fund. If the board of supervisors adopts the resolution, the county auditor shall do all of the following:

(a) (1) Be subject to the same requirements and limitations otherwise prescribed for the board of supervisors in this article.

(b) (2) In lieu of acting by resolution, act by signed statement having the same content otherwise prescribed in this article for resolutions.

(c) (3) Render a written report to the board of ~~supervisors~~ supervisors at the end of each fiscal year identifying the cash difference funds in existence during the fiscal year, the amount of those funds, and the officer using the fund. The board of supervisors may require the county auditor to give an account of the cash difference fund at any other time.

(c) The county auditor shall send a copy of his or her signed statement to each county officer or administrative head of a county department ~~or judicial district~~ who has the fund.

Comment. Section 29370.1 is amended to reflect:

(1) Unification of the municipal and superior courts pursuant to former Section 5(e) of Article VI of the California Constitution. See Trial Court Unification: Revision of Codes, 28 Cal. L. Revision Comm'n Reports 51, 70 (1998) (explaining that before trial court unification, statutory reference to "judicial district" generally meant "municipal court district").

(2) Enactment of the Trial Court Employment Protection and Governance Act. See, e.g., Sections 71601(l) ("trial court employee" defined), 71615(c)(5) (trial court as employer of all trial court employees).

(3) Enactment of the Lockyer-Isenberg Trial Court Funding Act, 1997 Cal. Stat. ch. 850 (see generally Sections 77000-77655). See, e.g., Sections 77001 (local trial court management), 77003 ("court operations" defined), 77200 (state funding of "court operations").

The section is also amended to make a spelling correction and insert paragraph labels.

NEXT STEP

The Commission should consider the input received on the Tentative Recommendation and the recommended changes described above. **The Commission should then decide whether to adopt the Tentative Recommendation, with or without changes, as a final recommendation, for printing and introduction in the Legislature.** If the Commission approves a final recommendation, the staff will seek an author to introduce the proposal in the Legislature in 2011.

Respectfully submitted,

Catherine Bidart
Staff Counsel

<p>Article 4. County Officers' Cash Difference Fund</p>	<p>Article 11. Court officers' cash difference fund</p>
<p>Gov't Code § 29370 (amended). County officers' cash difference fund</p> <p>29370. The board of supervisors may establish a county officers cash difference fund for the use of any county officer or administrative head of any county department or judicial district handling county funds by adopting a resolution setting forth the amount of the fund. Certified copies of the resolution shall be transmitted to the county auditor and to each county officer or administrative head of a county department or judicial district who has such fund.</p>	<p>Gov't Code § 71400 (added). Court officers' cash difference fund</p> <p>71400. The presiding judge may establish a court officers cash difference fund for the use of any court officer handling court funds by adopting an order setting forth the amount of the fund. Certified copies of the order shall be transmitted to the auditor of the court and to each court officer who has a cash difference fund.</p>
<p>Gov't Code § 29370.1 (amended). County auditor</p> <p>29370.1. <u>(a)</u> As an alternative to Section 29370, the board of supervisors may, by resolution, authorize the county auditor to perform the functions of the board in establishing, increasing, reducing, or discontinuing any county officers cash difference fund.</p> <p><u>(b)</u> The resolution adopted by the board of supervisors may set the amount of the fund. If the board of supervisors adopts the resolution, the county auditor shall do all of the following:</p> <p>(a) <u>(1)</u> Be subject to the same requirements and limitations otherwise prescribed for the board of supervisors in this article.</p> <p>(b) <u>(2)</u> In lieu of acting by resolution, act by signed statement having the same</p>	<p>Gov't Code § 71401 (added). Court auditor</p> <p>71401. (a) As an alternative to Section 71400, the presiding judge may, by order, authorize the auditor of the court to perform the functions of the presiding judge in establishing, increasing, reducing, or discontinuing any court officers cash difference fund.</p> <p>(b) The order by the presiding judge may set the amount of the fund. If the presiding judge issues the order, the auditor of the court shall do all of the following:</p> <p>(1) Be subject to the same requirements and limitations otherwise prescribed for the presiding judge in this article.</p> <p>(2) In lieu of acting by order, act by signed statement having the same content otherwise prescribed in this article for orders.</p>

<p>content otherwise prescribed in this article for resolutions.</p> <p>(e) (3) Render a written report to the board of supervisors <u>supervisors</u> at the end of each fiscal year identifying the cash difference funds in existence during the fiscal year, the amount of those funds, and the officer using the fund. The board of supervisors may require the county auditor to give an account of the cash difference fund at any other time.</p> <p>(c) The county auditor shall send a copy of his or her signed statement to each county officer or administrative head of a county department or judicial district who has the fund.</p>	<p>(3) Render a written report to the presiding judge at the end of each fiscal year identifying the cash difference funds in existence during the fiscal year, the amount of those funds, and the officer using the fund. The presiding judge may require the auditor to give an account of the cash difference fund at any other time.</p> <p>(c) The auditor of the court shall send a copy of the auditor's signed statement to each court officer who has the fund.</p>
<p>Gov't Code § 29371 (amended). Overage fund</p> <p>29371. If the board elects to establish a cash difference fund, it shall by the same resolution also establish an overage fund for the use of each county officer or administrative head of a county department or judicial district affected.</p>	<p>Gov't Code § 71402 (added). Overage fund</p> <p>71402. If the presiding judge elects to establish a cash difference fund, the judge shall by the same order also establish an overage fund for the use of each court officer affected.</p>
<p>Gov't Code § 29372 (amended). Warrant</p> <p>29372. Upon the adoption of the resolution, the auditor shall draw his <u>a</u> warrant in favor of the county officer or administrative head of a county department or judicial district in the amount set forth in the resolution, and the treasurer shall pay the warrant. The county officer or administrative head of a county department or judicial district shall use this fund only for cash deficits pursuant to this article.</p>	<p>Gov't Code § 71403 (added). Warrant</p> <p>71403. Upon the adoption of the order, the auditor shall draw a warrant in favor of the court officer in the amount set forth in the order, and the treasurer shall pay the warrant. The court officer shall use this fund only for cash deficits pursuant to this article.</p>

Gov't Code §§ 29373-29390.1.	Gov't Code §§ 71404-71417 (Court-tailored equivalent of Gov't Code §§ 29373-29390.1)
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**EMAIL FROM ALAN CARLSON,
ORANGE COUNTY SUPERIOR COURT
(SEPTEMBER 30, 2010)**

Commission staff;

My staff has reviewed the proposal and makes the following observations. These are comments, and not recommendations, nor do they represent the official position of the court.

Thank you for the opportunity to comment

Alan

Alan Carlson
Chief Executive Officer
Orange County Superior Court
New office phone number: 657-622-7017

1) B&P 25762 Fine, bail forfeitures, and bail deposits for violation of Alcoholic Beverage Control Act (page 17) and GC 71384, Deposit of money collected and audit of accounts (page 47) appear to be contradicting each other. Under the amended GC 71384 the courts will be allowed to deposit all monies collected in the place of their choice. If I am understanding this correctly, it would mean that all Traffic/Criminal revenues would now be allowed to be deposited in a Court Bank Account instead of the Counties. In this case then B&P 25762 should remove the requirement to deposit these funds in the County Treasury and should state that monies can be deposited in the Court Trust Fund and distributed according to PC 1463 35 days after the end of the month. Any other code sections that specify monies to be distributed into the County Treasury should be updated as well.

2) GC 25257, Collection of money payable to the County (page 37). This will allow the County to discharge accountability of collecting on amounts that are too small to justify collection of after approval of the Board of Supervisors. The note portion is asking the Court if they have the authority to do this or if a statute to allow it is needed. I don't believe there is one and I think we need one. However, the Collections legislation that has been drafted (not in a bill yet) accounts for this

but requires an agreement between the Court and the County first. In my opinion the Court should be allowed to discharge these amounts under Court Executive/Judicial approval and/or AOC approval and should not have to reach an agreement with the County first.

3) GC 29370, County officers' cash difference fund (page 38). This process should be handled internally within the Court and an authority in the Code to do so is needed.

4) PC 1163.22, Fees deposited pursuant to 1463 (page 47-48). This is currently being distributed to the Court in the same manner as the Night Court Fee was prior to the transfer of facilities. I am not sure if budget is tracking how these funds are being used and if there is any excess that needs to be re-distributed. In my opinion I agree that the money should not be in control of the County. It should remain with the Court or it should be transferred to the AOC. I feel that the sentence "Any moneys in the special account in excess of the amount required to defray those costs shall be re-deposited and distributed by the county treasurer pursuant to Section 1463" should be removed from this code section and should be changed to allow the excess funds remaining after a certain period of time to be distributed to the Court Operating Fund. Or, instructions should be included on how to re-distribute the excess funds. That is, the same percentage of funds should be re-distributed to all agencies that pay into this fund or based on an average percentage of how much each agency pays into the fund.



JOHN A. CLARKE
EXECUTIVE OFFICER / CLERK

111 NORTH HILL STREET
LOS ANGELES, CA 90012-3014

Superior Court of California
County of Los Angeles

October 25, 2010

Catherine Bidart
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

**Re: Trial Court Restructuring: Rights and Responsibilities of the County as
Compared to the Superior Court**

Dear Ms. Bidart,

The Los Angeles Superior Court has reviewed the California Law Revision Commission's August 10 Tentative Recommendation on Trial Court Restructuring. Our comments are in the attachment.

Yours truly,

A handwritten signature in black ink, appearing to read "John A. Clarke", followed by a small mark that looks like "1/22".

John A. Clarke
Executive Officer/Clerk

w/enc: Comments on CLRC's Tentative Recommendation on Trial Court Restructuring

c: Hon. Charles W. McCoy, Presiding Judge
Hon. Lee Smalley Edmon, Presiding Judge-Elect

Several recommendations in the Commission's August 10 Tentative Recommendation on Trial Court Restructuring either conflict with current practice under existing authority, raise significant policy issues, or both. These include recommendations regarding the court's authority to deposit money collected by the court into the county treasury, the payment of counsel assigned to represent minors in family law proceedings and the Judicial Council's proposed role in establishing and supervising a uniform trial court accounting system. For the reasons discussed below, these proposals should not be included in the Commission's final recommendation to the Legislature.

1. Introductory Statement

The Tentative Recommendation assumes and states that the State is now fully responsible for funding trial court operations and that the funding and operation of trial courts is no longer a county concern. This is not accurate and does not reflect the fact that each county has ongoing interests in the trial court in that county and that counties' are authorized to not only make mandated annual payments in support of trial court operations but also to provide additional support beyond that mandated by the state to best serve the interests of their residents.

Continued integration of criminal case management systems and a close working relationship with county agencies, including the district attorney, public defender, alternate public defender, sheriff, probation officer, and county departments of children services, are essential to ensure that the counties and the courts operate efficiently and best serve the public. To this end, the appellate courts have, for example, urged superior court presiding judges to take a leadership role in assisting county agencies to resolve the complex and intractable problems of jail overcrowding in an era of shrinking funds for county facilities and jail capacity. See *Gates v. Municipal Court* (1992) 9 Cal.App.4th 45, 59.

Consistent with this the Legislature has mandated local authority and responsibility of trial courts to manage day-to-day operations, countywide administration of the trial courts, local personnel plans, processes and procedures. Government Code § 77001. See also uncodified Section 3(l) of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Stats. 1997, ch. 850), which also emphasizes the importance of independent local court financial management.¹

¹ "SEC. 3. The Legislature declares its intent to do each of the following: **** (l) Acknowledge the need for strong and independent local court financial management, including encouraging the adoption by the Judicial Council of a Trial Courts Bill of Financial Management Rights, to be approved no later than January 1, 1998. This bill of management rights shall minimize the rules and regulations in the area of financial affairs to those sufficient to guarantee efficiency, but shall give strong preference to the need for local flexibility in the management of court financial affairs."

To facilitate counties' ability to recruit and retain highly qualified court staff to serve their residents, the Legislature has authorized trial court staff to be paid through county rather than state payroll systems so that they can fully participate in enhanced benefits that counties may make available. Government Code §§ 71627(c) and 71624(d).²

2. Superior courts should continue to be classified as a county entity.

Without citing any specific authority for the contention, the Tentative Recommendation states on page 5 that "the court should no longer be classified as a county entity." This is a policy decision that should not be made by the Law Revision Commission, and is inconsistent with the discussion set forth above in the Introductory Statement. Each superior court remains an important and inextricable part of the county justice system serving the same constituency as the county. Retaining a superior court's classification as a county entity is consistent with the Legislature's mandated local authority and responsibility of trial courts to manage day-to-day operations, countywide administration of the trial courts, local personnel plans, processes and procedures.

3. Government Code § 71384

In many counties, including Los Angeles County, local court financial management under the Trial Court Funding Act includes the integration of county financial systems, county auditor-controller functions, and county employee payroll and benefit administration services into the court's fiscal management processes. The tentative recommendations should be modified to the extent that they conflict with this continuing relationship, as the provisions targeted by such recommendations have not been made obsolete by recent trial court restructuring.

² In enacting the Trial Court Employment Protection and Governance Act in 2002, the Legislature provided that where, as is the case in Los Angeles County, the county administers federally regulated benefits to trial court employees, the court may contract with the county and trial court employees shall be eligible to continue to participate in such plans subject to federally regulated benefit regulations, policies, terms, and conditions. Government Code § 71627(c). The Los Angeles Superior Court has entered into such a contract with the County of Los Angeles, and the federal regulations, policies, terms, and conditions under which they participate limit the amount of those benefits to percentages of compensation received from the county as paymaster. Government Code § 71627(c) provides that "[t]o facilitate trial court employee participation in county federally regulated benefits plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees." Similarly, with regard to retirement plans, such as the LACERA retirement plan that Los Angeles Superior Court trial court employees participate in, Government Code section 71624(d), also part of the Trial Court Employment Protection and Governance Act, provides that "[t]o facilitate trial court employee participation in county defined-benefit retirement plans, the trial court and county may mutually agree that the county shall administer the payroll for trial court employees."

One such conflict arises in the tentative recommendation to amend Government Code § 71384 to delete the provision authorizing the uniform system of accounting to provide for the deposit of all money collected by the superior court in the county treasury for disbursement from it. Such authorization is of course consistent with provisions that *require* deposit directly in the county treasury. But it also facilitates compliance with provisions that require specified collections made by the court to be deposited ultimately into accounts other than the county treasury, including accounts established by the Administrative Office of the Courts.

For example, Government Code § 68085.1 requires specified fees and fines to be deposited, as soon as practicable, into a bank account established for this purpose by the Administrative Office of the Courts. In Los Angeles County, a two-step process is required to effectively comply with this section due to the logistics of receiving and processing collections from 24 court locations. Collections subject to section 68085.1 are first deposited into a trust account established in the county treasury for disbursement to the bank account established under that section after the collections have been reconciled and balanced. Although disbursements from this trust account to the bank account occur soon after the funds are collected, the initial deposit into the county treasury is necessary for effective compliance with section 68085.1.

Government Code § 71384 authorizes but does not require the accounting system to provide for deposit of all money collected into the county treasury. As it is permissive, not inconsistent with current law and necessary to the effective management of collections, the authority to allow deposit of all money into the county treasury should be retained.

4. Family Code § 3153

The Tentative Recommendation correctly notes the conflict between Family Code § 3153, which expressly provides that payment of counsel appointed for minors pursuant to Family Code § 3150 is a county obligation, and trial court funding provisions, which include such costs within the definition of “court operations” payable by the state. However, the provisions of section 3153 are consistent with the historic and current treatment of such costs by the court and county in some counties, including Los Angeles County, as county charges. Such counties have paid and continue to pay these costs directly as a county expense. Consequently these costs are not reflected in the county’s Maintenance of Effort (MOE) obligation that is based on the county’s historically reported expenditures on state court operations and that is transmitted to the Trial Court Trust Fund to support state funding of court operations.

Repeal of section 3153 as tentatively recommended by the Commission would jeopardize current funding levels for court appointed counsel for minors in such counties by resulting in neither a county obligation to pay the costs of appointed

counsel directly nor an obligation to otherwise provide funds for court-appointed counsel as part of the County's MOE obligation. Because Los Angeles County and certain other counties did not include such costs in the determination of their 1996-97 base year calculation of their ongoing Maintenance of Effort responsibility, little more than \$2 million dollars has been appropriated statewide for these costs. In Los Angeles County, such costs exceed \$6 million annually.

Historical treatment of court-appointed counsel costs

In treating appointed counsel costs not as a court operations expense but as a County cost consistent with the provisions of section 3153, these expenses historically were not reported as "court operations" in Quarterly Financial Reports (QFR) prepared and certified by the county auditor. This includes QFRs that were submitted for fiscal year 1994-95.

The Lockyer Isenberg Trial Court Funding Act of 1997 (TCFA) gave practical significance in 1997 to 1994-95 county expenditures on "court operations" as reported in the QFR. In relieving the counties of the statutory obligation to fund "court operations," the TCFA required each county to transmit a Maintenance of Effort (MOE) payment to the State Trial Court Trust Fund based on reported 1994-95 expenditures on "court operations." Because the cost of minor counsel was not reported as "court operations" in the 1994-95 QFR but was instead reported as a county expense, the County's MOE payment did not incorporate such costs and would have been understated had the County been relieved of the obligation to pay assigned counsel costs.

This QFR reporting practice continued into fiscal year 1996-97 which provided the basis for establishing each court's "baseline funding" in budgets adopted pursuant to the TCFA. As reported "unallowable" County expenses, section 3153 payments thus were not incorporated as "court operations" expenses into the court's State-provided baseline funding for budgeting under the TCFA.

Because expenditures as reported in the 1994-95 QFR were the basis for establishing the County's MOE obligation, the TCFA provided for a declaration process to correct any reporting errors made in that year. "Court operations" expenses incorrectly reported as county expenses could be corrected to increase the County's MOE payment to reflect the State's responsibility for the expense. County expenses incorrectly reported as "court operations" could be corrected to reduce the County's MOE to reflect the County's responsibility for the expense.

The court and the county engaged in a deliberative process to submit declarations to correct such errors. Neither contested the reporting of expenses for counsel appointed in family law matters as county expenses in the 1994-95 QFR that were "unallowable" and not for "court operations." These expenses were treated as a continuing county expense obligation in the ensuing years for budgeting purposes as well.

Although there is a conflict in the provisions of Family Code § 3153 and Government Code § 77003, whether and how it should be addressed raises significant issues regarding how court-appointed counsel costs will be funded in courts where the court and county have mutually treated such costs as county costs consistent with section 3153 before, during and after the MOE review process. The tentative recommendation to amend section 3153, if implemented, would therefore have significant policy ramifications and should be withdrawn as the provisions of section 3153 are not obsolete.

Uniform Trial Court Accounting System

Making the Judicial Council solely responsible for establishing and supervising a uniform trial court accounting system is inconsistent with Legislative mandates, and provisions authorizing counties to act as a superior court's paymaster for trial court employees. The Tentative Recommendation is to provide that the Judicial Council, in consultation with the Controller, is responsible for establishing and supervising a uniform statewide accounting system for trial courts. The recommendation does not provide for any consultation with or involvement of trial courts in the establishment of such a system. That recommendation is inconsistent with the Legislature's mandated local authority and responsibility of trial courts to manage day-to-day operations, countywide administration of the trial courts, local personnel plans, processes and procedures. Government Code § 77001. It is also inconsistent with the Legislature's direction to the Judicial Council to adopt a Trial Courts Bill of Financial Management Rights, something the Judicial Council has not done.

In addition, such exclusive control in the Judicial Council is inconsistent with Government Code §§ 71627, and 71624(d). To facilitate counties' ability to recruit and retain highly qualified court staff to serve their residents, the Legislature has authorized trial court staff to be paid through county rather than state payroll systems so that they can fully participate in enhanced benefits that counties may make available. Government Code §§ 71627(c), and 71624(d).

Thank you for the opportunity to provide input on these important issues.



County of Orange
California

Thomas G. Mauk
County Executive Officer

October 21, 2010

Law Revision Commission
RECEIVED

OCT 24 2010

California Law Revision Commission
40000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

File: _____

Subject: Trial Court Restructuring: Rights and Responsibilities of the
County as Compared to the Superior Court (Part 1)

Dear Commission:

The County of Orange wants to thank you for the opportunity to review and comment on the Commission's tentative recommendations on the statute revisions. After careful review, the County has no changes or revisions to present to the Commission.

We will be happy to review future recommendations as you continue your work in this area.

Sincerely yours,

Stephen Dunivent
Stephen Dunivent, Deputy CEO
Government and Public Services

cc: Honorable Kim G. Dunning, Presiding Judge
Orange County Superior Court
Elizabeth Howard, Legislative Representative
California State Association of Counties

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**EMAIL FROM DARYL E. KENNEDY,
SHASTA COUNTY SUPERIOR COURT
(OCTOBER 22, 2010)**

Catherine Bidart
Staff Counsel
California Law Revision Commission

Dear Ms. Bidart:

I am writing on behalf of the Shasta County Superior Court to provide public comment on the need for revisions to subdivision (a) of Penal Code section 1463.22 [hereinafter "Subdivision (a)"].

As recognized in the Tentative Recommendation of the California Law Revision Commission dated August 2010, there is a need to revise Subdivision (a) to reflect the Trial Court Funding Act.

Subdivision (a) states that the monies governed by the subdivision are intended to defray certain costs incurred by the superior court. The California State Controller's Manual correctly recognizes that the monies are intended for the use of the local trial court. See State Controller's Manual (Revised 6/28/10), Appendix C, page C-12, Table #2 - 3.

The current version of the statute directs that the county treasurer deposit the monies into a special account, without specifying the nature of the special account. While existing law permits the monies to be deposited into the local operating account of each trial court, it does not require doing so.

Our court believes that the statute should be updated to require that the monies go directly to the entity for whose benefit they are intended. That was how the statute operated before Trial Court Funding, when counties bore the costs of trial court operations. Since the monies are intended for the superior court, our court respectfully suggests that Subdivision (a) be revised to direct that the county treasurer deposit them into the local operating account of each superior court.

Such language would result in the fastest reimbursement of the costs that Subdivision (a) is intended to defray. A more circuitous route for transmitting the monies to each trial court (e.g., by transmitting them to the Trial Court Trust Fund for eventual return to the trial court) would needlessly delay such reimbursements, and would also undoubtedly involve increased administrative costs and inefficiencies.

Thank you for your consideration.

Daryl E. Kennedy
General Counsel
Shasta County Superior Court
530-229-8160

**EMAIL FROM MARY ZURITA, COUNTY OF MONTEREY
(OCTOBER 25, 2010)**

On behalf of Lew Bauman, this email responds to the CLRC's request for comments on the Tentative Recommendation on Trial Court Restructure: Rights and Responsibilities of the County as Compared to the Superior Court. Specifically, the CLRC requested input on the amendment to Section 1463.22(a) of the Penal Code which directs the county treasurer to deposit designated monies to defray court costs into a special account. The input requested was: Whether subdivision (a) should continue to provide that funds to defray court costs are under the county treasurer's control, given the shift of funding court operations from the county to the state, or, if not, how should subdivision (a) be amended? Specifically, which entity should control the funds to defray court costs, and where should the funds be deposited?

The County of Monterey believes the funds to defray court costs should remain under the county treasurer's control. Counties currently maintain comprehensive collection systems and have expertise in the collection and distribution functions. Changing the funds to State control could result in a delay of the distribution process resulting in a cash flow problem. Additionally, creating a state collection process function similar to that operated by the County would incur new costs and be duplicative of an existing system (the County's) that could be viewed as a 3rd party vendor.

Mary Zurita
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Lew C. Bauman, CAO
County of Monterey
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